

2013 DRAFTING REQUEST

Bill

Received: **10/9/2012** Received By: **jkreye**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Ley**
May Contact: Drafter: **jkreye**
Subject: **Tax, Other - miscellaneous** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

DOA:.....Ley, BB0099 -

Topic:

Reliance on past audits

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/16/2012	kfollett 10/18/2012		_____			
/P1	jkreye 1/15/2013		phenry 10/19/2012	_____	sbasford 10/19/2012		State
/P2		kfollett 1/15/2013	phenry 1/15/2013	_____	sbasford 1/15/2013		State

FE Sent For:

<END>

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/?	jkreye	1P/16f 10/18	1P/16f	10/19 P-1 st			
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FE Sent For:

<END>

Kreye, Joseph

0255

From: Hanaman, Cathlene
Sent: Monday, October 08, 2012 8:50 AM
To: Shovers, Marc; Kreye, Joseph
Subject: FW: Statutory Language Drafting Request

From: Emily.Ley@wisconsin.gov [mailto:Emily.Ley@wisconsin.gov]
Sent: Wednesday, October 03, 2012 4:51 PM
To: Hanaman, Cathlene
Cc: Frederick, Caitlin - DOA; Ley, Emily A - DOA; Thornton, Scott - DOA
Subject: Statutory Language Drafting Request

Biennial Budget: 2013-15

DOA Tracking Code: BB0099

Topic: DOR: Reliance on Past Audits

SBO Team: TLGED

SBO Analyst: Ley, Emily - DOA
Phone: 608-266-7597
E-mail: Emily.Ley@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent: Amend s. 73.16(1)(a) Wis. Stats., "Commonly controlled group" and replace with "Combined group" as defined in s. 71.255(1)(a). Create a statutory provision in s. 73.16 Wis. Stats., that allows taxpayers to avoid liability for tax, interest and penalty asserted on a tax issue in a current audit determination when the tax issue is the same as a tax issue in a prior audit determination, as shown by written schedules, exhibits, audit reports, documents or other written evidence pertaining to the audit determination, and the written schedules, exhibits, audit reports, documents or other written evidence show that an auditor reviewed the tax issue and did not adjust the person's tax treatment of the issue. Exceptions would apply when: (1) there was a statutory or administrative rule change that affects the tax issue since the prior audit determination; (2) written guidance was disseminated to the public or to the person who was subject to the audit determination since the prior audit determination; or (3) there was a final tax appeals decision or court decision since the prior audit determination. Also, exceptions apply when the taxpayer did not give the department employee adequate and accurate information as in sec. 73.03(47), Wis. Stats., or when the tax issue was settled per a written agreement.

Attachments: False

Please send completed drafts to statlanguage@wisapps.wi.gov

see LRB 3159/1
3044/1
5823/AB23
2011 spec session



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0255/?

JK...

DOA:.....Ley, BB0099 - Reliance on past audits

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

in 10-16-12

D-N

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Insert A

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 73.16 (1) (a) of the statutes is repealed.

3 SECTION 2. 73.16 (1) (ab) of the statutes is created to read:

4 73.16 (1) (ab) "Combined group" has the meaning given in s. 71.255 (1) (a).

5 SECTION 3. 73.16 (3) of the statutes is created to read:

6

(END)

Insert B

- 1 penalties related to a taxpayer's negligence, requiring the exercise of
2 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This
This bill requires the Department of Revenue (DOR) to take certain actions related to administering taxes and fees. Under the bill, generally, with regard to any audit, assessment, or claim for a refund, DOR may not take a position that is contrary to any rule promulgated by DOR that was in effect during the period related to the audit, assessment, or claim or that is contrary to any guidance published by DOR prior to that period and not subsequently retracted, altered, or amended.

Under the bill, generally, a person who is subject to an assessment or audit determination by DOR is not liable for any amount that DOR asserts that the person owes if the liability asserted is the result of a tax issue that existed in a prior assessment or audit, a DOR employee involved in the prior assessment or audit knew of the tax issue, and DOR did not assert the liability for the tax issue at the time of the prior assessment or audit. This provision, however, does not cover the treatment of tax issues that were not specifically addressed in the prior assessment or audit determination by DOR.

Insert X
Under the bill, DOR may not impose a penalty on a taxpayer for negligence or for otherwise filing an improper return unless the taxpayer's action was due to the taxpayer's willful neglect and not to reasonable cause.

The bill prohibits class action lawsuits against the state or any other party if the relief sought by the plaintiff includes the refund of any tax administered by the state.

Under current law, DOR may choose not to appeal a ruling by the Tax Appeals Commission (commission) and, instead, file a notice of nonacquiescence with the clerk of the commission. The effect of filing the notice is that, although the commission's decision is binding on the parties involved in the ruling, the commission's legal reasoning is not binding on DOR with regard to future cases. Under the bill, although DOR may file a notice of nonacquiescence and, therefore, not be required to follow the commission's legal reasoning, the parties involved in the ruling are bound by the commission's decision and the decision may be cited by the commission and the courts in future cases.

Under current law, a person may file a petition with a state agency to issue a declaratory ruling with respect to how a statute or rule applies to any person, property, or set of facts. The agency must, within a reasonable time after receiving the petition, either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition. Under the bill, if a person files a petition with DOR to issue a declaratory ruling, DOR must deny the petition, issue a notice that it will issue a ruling on the facts contained in the petition, or schedule a hearing for the matter described in the petition no later than 30 days after receiving the petition. If DOR does not deny the petition and does not issue a notice, DOR must hold a hearing and determine, no later than 180 days after it receives the

1 commission or courts, the department shall apply the retraction, alteration, or
2 amendment prospectively only, unless the change is to a taxpayer's benefit, in which
3 case, the department shall apply the retraction, alteration, or amendment
4 retroactively. A retroactive change in any previously published or previously issued
5 written guidance related to implementing a legislative act or final and conclusive
6 decision of the tax appeals commission or courts may take effect no earlier than the
7 act's effective date or the date on which the decision became final and conclusive
8 unless otherwise prescribed by the legislature or ordered by the courts.

9 **(3) RELYING ON PAST AUDITS.** (a) A person who is subject to a determination by
10 the department, including all other members of that person's commonly controlled
11 group for purposes of determining the tax due under s. 71.23 for taxable years
12 beginning after December 31, 2008, shall not be liable for any amount that the
13 department asserts that the person owes if all of the following conditions are
14 satisfied:

15 1. The liability asserted by the department is the result of a tax issue during
16 the period associated with a prior determination for which the person is subject to
17 and the tax issue is the same as the tax issue during the period associated with the
18 current determination.

19 2. A department employee who was involved in the prior determination
20 identified or reviewed the tax issue before completing the prior determination, as
21 shown by any schedules, exhibits, audit reports, documents, or other written
22 evidence pertaining to the determination, and the schedules, exhibits, reports,
23 documents and other written evidence show that the department did not adjust the
24 person's treatment of the tax issue.

1 3. The liability asserted by the department as described under subd. 1. was not
2 asserted in the prior determination.

3 (b) This subsection does not apply to any period associated with a
4 determination, if the period begins after the promulgation of a rule, dissemination
5 of written guidance to the public or to the person who is subject to the determination,
6 the effective date of a statute, or the date on which a tax appeals commission or court
7 decision becomes final and conclusive and if the rule, guidance, statute, or decision
8 imposes the liability as result of the tax issue described in par. (a) 1.

9 **(4) NEGLIGENCE DETERMINATIONS.** The department shall not impose a penalty
10 on a taxpayer under ss. 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14,
11 76.28 (6) (b), 76.39 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and
12 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction
13 was due to the taxpayer's willful neglect and not to reasonable cause.

14 **(5) APPLICABILITY.** Except as provided in subs. (3) and (4), notwithstanding any
15 other provision of law, this section applies to all taxes and fees administered by the
16 department.

17 **SECTION 13.** 76.05 (2) of the statutes is amended to read:

18 **76.05 (2)** No Upon a showing by the department under s. 73.16 (4), no company
19 shall be allowed in any action or proceeding to question the amount or valuation of
20 its property as assessed by the department unless such company shall have made
21 and filed with the department a full and complete report of the facts and information
22 prescribed by s. 76.04 and called for by the department thereunder, provided that the
23 refusal or neglect of such company to file the report in time may on application of the
24 company and for good cause shown be excused by the department on condition that
25 such. If the department has not made a showing under s. 73.16 (4), the company shall

this subsection does not apply to any period associated with a determination if the taxpayer did not give the department employee adequate and accurate information or if the issue is settled by a written agreement between the department

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0255/?dn

JK:...

Date

Emily:

Please note that the draft language is similar to that originally contained in September 2011 Special Session Senate Bill 23. The language was removed by a senate amendment. The bill, without the language related to past audits, became 2011 Wisconsin Act 68.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

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FROM THE
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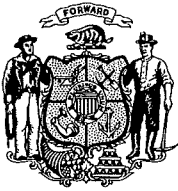
LRB-0255/P1dn
JK:kjf:ph

October 18, 2012

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0255/P1
JK:kjf:ph

RMK

DOA:.....Ley, BB0099 – Reliance on past audits

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

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- 1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under this bill, generally, a person who is subject to an assessment or audit determination by DOR is not liable for any amount that DOR asserts that the person owes if the liability asserted is the result of a tax issue that existed in a prior assessment or audit, a DOR employee involved in the prior assessment or audit knew of the tax issue, and DOR did not assert the liability for the tax issue at the time of the prior assessment or audit. This provision, however, does not cover the treatment of tax issues that were not specifically addressed in the prior assessment or audit determination by DOR.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 2 SECTION 1. 73.16 (1) (a) of the statutes is repealed.
- 3 SECTION 2. 73.16 (1) (ab) of the statutes is created to read:

1 73.16 (1) (ab) “Combined group” has the meaning given in s. 71.255 (1) (a).

2 **SECTION 3.** 73.16 (3) of the statutes is created to read:

3 73.16 (3) RELYING ON PAST AUDITS. (a) A person who is subject to a determination
4 by the department, including all other members of that person’s combined group for
5 purposes of determining the tax due under s. 71.23 for taxable years beginning after
6 December 31, 2008, shall not be liable for any amount that the department asserts
7 that the person owes if all of the following conditions are satisfied:

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24 decision becomes final and conclusive and if the rule, guidance, statute, or decision
25 imposes the liability as result of the tax issue described in par. (a) 1. This subsection

1 does not apply to any period associated with a determination if the taxpayer did not
2 give the department employee adequate and accurate information or if the issue is
3 settled by a written agreement between the department and the taxpayer.

4

(END)

Insert 3-3

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0255/P2ins
JK:kjf:ph

Insert 3 - 3

SECTION 9337. Initial applicability; Revenue.

(1) RELYING ON PAST AUDITS. The treatment of sections 73.16 (1) (a) and (ab) and
(3) of the statutes first applies to audit determinations issued on January 1, 2014,
regardless of when a prior audit determination was made.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0255/P2
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8 (END)